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SHOP-VAC CORPORATION

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

RICHARD A. SILBER, an individual and on behalf of all others similarly situated,

CASE NO. 3:08CV00637-JLS (RBB)

Plaintiff,

VS.

SHOP-VAC CORPORATION, a
Pennsylvania Corporation, and DOES 1
through 100, inclusive

**NOTICE OF MOTION AND MOTION FOR
ORDER DISMISSING PLAINTIFF'S
COMPLAINT (FRCP 12(B)(6))**

DATE: July 18, 2008

TIME: 10:30 AM

COURTROOM: 6

Hon. Janis L. Sammartino

TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT ON Friday, July 18, 2008, or as soon thereafter as the matter may be heard in Courtroom 6 of the above-entitled Court, located at 940 Front Street, San Diego, California, Defendant SHOP-VAC CORPORATION will move the Court pursuant to Rule 12(b)(6), Fed. R. Civ. Pro. for an order Dismissing Plaintiff's Complaint for failure to state a claim upon which relief can be granted. Specifically, Plaintiff fails to plead sufficient facts to confer standing pursuant to the Consumer Legal Remedies Act (Cal.Civil Code § 1750, et seq.).

1 California's Unfair Competition Law (Cal. Business & Professions Code § 17200, et seq., and
 2 California Business & Professions Code § 17533.7. Further, Plaintiff failed to plead facts sufficient
 3 to confer standing to bring the action as a class representative, i.e., he has not stated facts that
 4 demonstrate that an ascertainable class exists with a well-defined community of interest among the
 5 class members and he has not stated facts that demonstrate that his interests are aligned with those of
 6 the class members.

7 This Motion is submitted simultaneously with Defendant's Motion to Strike pursuant to Rule
 8 12 (f), Fed. R. Civ. Proc. This Motion is based on this Notice of Motion and Motion, the
 9 Memorandum of Points and Authorities filed herewith, the pleadings on file with the Court, and such
 10 argument as may be presented at the hearing on the Motion.

11 Dated: April 29, 2008

ARMSTRONG TEASDALE LLP

12 By: /s/ Susan D. Condon

13 Attorney for Defendant SHOP-VAC
 14 CORPORATION
 15 Email: scondon@armstrongteasdale.com

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that a copy of the foregoing document was filed electronically this **29th day**
 18 **of April, 2008** with the Clerk of the USDC Southern District of California (San Diego) to be served
 19 by operation of the Court's ECF electronic filing system upon the following:

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